

105TH CONGRESS  
1ST SESSION

# S. 72

To amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. KYL introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Capital Gains Reform  
5       Act of 1997”.

6       **SEC. 2. 70-PERCENT CAPITAL GAINS DEDUCTION FOR TAX-**  
7       **PAYERS OTHER THAN CORPORATIONS.**

8       (a) IN GENERAL.—Section 1202 of the Internal Rev-  
9       enue Code of 1986 is amended to read as follows:

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1 **“SEC. 1202. CAPITAL GAINS DEDUCTION.**

2       “(a) GENERAL RULE.—If for any taxable year a tax-  
3 payer other than a corporation has a net capital gain, 70  
4 percent of such gain shall be a deduction from gross in-  
5 come.

6       “(b) ESTATES AND TRUSTS.—In the case of an es-  
7 tate or trust, the deduction shall be computed by excluding  
8 the portion (if any) of the gains for the taxable year from  
9 sales or exchanges of capital assets which, under sections  
10 652 and 662 (relating to inclusions of amounts in gross  
11 income of beneficiaries of trusts), is includible by the in-  
12 come beneficiaries as gain derived from the sale or ex-  
13 change of capital assets.

14       “(c) COORDINATION WITH TREATMENT OF CAPITAL  
15 GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—  
16 For purposes of this section, the net capital gain for any  
17 taxable year shall be reduced (but not below zero) by the  
18 amount which the taxpayer takes into account as invest-  
19 ment income under section 163(d)(4)(B)(iii).

20       “(d) TRANSITIONAL RULE.—

21               “(1) IN GENERAL.—In the case of a taxable  
22 year which includes January 1 of the year following  
23 the date of enactment of this section—

24                       “(A) the amount taken into account as the  
25 net capital gain under subsection (a) shall not  
26 exceed the net capital gain determined by only

1 taking into account gains and losses properly  
 2 taken into account for the portion of the tax-  
 3 able year on or after such January 1, and

4 “(B) the amount of the net capital gain  
 5 taken into account in applying section 1(h) for  
 6 such year shall be reduced by the amount taken  
 7 into account under subparagraph (A) for such  
 8 year.

9 “(2) SPECIAL RULES FOR PASS-THRU ENTI-  
 10 TIES.—

11 “(A) IN GENERAL.—In applying paragraph  
 12 (1) with respect to any pass-thru entity, the de-  
 13 termination of when gains and losses are prop-  
 14 erly taken into account shall be made at the en-  
 15 tity level.

16 “(B) PASS-THRU ENTITY DEFINED.—For  
 17 purposes of subparagraph (A), the term ‘pass-  
 18 thru entity’ means—

19 “(i) a regulated investment company,

20 “(ii) a real estate investment trust,

21 “(iii) an S corporation,

22 “(iv) a partnership,

23 “(v) an estate or trust, and

24 “(vi) a common trust fund.”.

1 (b) DEDUCTION ALLOWABLE IN COMPUTING AD-  
2 JUSTED GROSS INCOME.—Section 62(a) of the Internal  
3 Revenue Code of 1986 (defining adjusted gross income)  
4 is amended by inserting after paragraph (15) the following  
5 new paragraph:

6 “(16) LONG-TERM CAPITAL GAINS.—The de-  
7 duction allowed by section 1202.”.

8 (c) CONFORMING AMENDMENTS.—

9 (1) Section 1 of the Internal Revenue Code of  
10 1986 is amended by striking subsection (h).

11 (2) Section 170(e)(1) of such Code is amended  
12 by striking “the amount of gain” in the material fol-  
13 lowing subparagraph (B)(ii) and inserting “30 per-  
14 cent (100 percent in the case of a corporation) of  
15 the amount of gain”.

16 (3) Section 172(d)(2)(B) of such Code is  
17 amended to read as follows:

18 “(B) the deduction under section 1202  
19 shall not be allowed.”.

20 (4) The last sentence of section 453A(c)(3) of  
21 such Code is amended by striking all that follows  
22 “long-term capital gain,” and inserting “the maxi-  
23 mum rate on net capital gain under section 1201 or  
24 the deduction under section 1202 (whichever is ap-  
25 propriate) shall be taken into account.”.

1           (5) Section 642(c)(4) of such Code is amended  
2           to read as follows:

3           “(4) ADJUSTMENTS.—To the extent that the  
4           amount otherwise allowable as a deduction under  
5           this subsection consists of gain from the sale or ex-  
6           change of capital assets held for more than 1 year,  
7           proper adjustment shall be made for any deduction  
8           allowable to the estate or trust under section 1202  
9           (relating to capital gains deduction). In the case of  
10          a trust, the deduction allowed by this subsection  
11          shall be subject to section 681 (relating to unrelated  
12          business income).”.

13          (6) The last sentence of section 643(a)(3) of  
14          such Code is amended to read as follows: “The de-  
15          duction under section 1202 (relating to capital gains  
16          deduction) shall not be taken into account.”.

17          (7) Section 643(a)(6)(C) of such Code is  
18          amended by inserting “(i)” before “there shall” and  
19          by inserting before the period “, and (ii) the deduc-  
20          tion under section 1202 (relating to capital gains de-  
21          duction) shall not be taken into account”.

22          (8)(A) Section 904(b)(2) of such Code is  
23          amended by striking subparagraph (A), by redesign-  
24          ating subparagraph (B) as subparagraph (A), and

1 by inserting after subparagraph (A) (as so redesignated) the following:

3 “(B) OTHER TAXPAYERS.—In the case of  
4 a taxpayer other than a corporation, taxable in-  
5 come from sources outside the United States  
6 shall include gain from the sale or exchange of  
7 capital assets only to the extent of foreign  
8 source capital gain net income.”.

9 (B) Section 904(b)(2)(A) of such Code, as so  
10 redesignated, is amended—

11 (i) by striking all that precedes clause (i)  
12 and inserting the following:

13 “(A) CORPORATIONS.—In the case of a  
14 corporation—”, and

15 (ii) in clause (i), by striking “in lieu of ap-  
16 plying subparagraph (A),”.

17 (C) Section 904(b)(3) of such Code is amended  
18 by striking subparagraphs (D) and (E) and inserting  
19 the following:

20 “(D) RATE DIFFERENTIAL PORTION.—The  
21 rate differential portion of foreign source net  
22 capital gain, net capital gain, or the excess of  
23 net capital gain from sources within the United  
24 States over net capital gain, as the case may  
25 be, is the same proportion of such amount as

1           the excess of the highest rate of tax specified  
 2           in section 11(b) over the alternative rate of tax  
 3           under section 1201(a) bears to the highest rate  
 4           of tax specified in section 11(b).”.

5           (D) Section 593(b)(2)(D)(v) of such Code is  
 6       amended—

7                   (i) by striking “if there is a capital gain  
 8           rate differential (as defined in section  
 9           904(b)(3)(D)) for the taxable year,” and

10                   (ii) by striking “section 904(b)(3)(E)” and  
 11           inserting “section 904(b)(3)(D)”.

12           (9) Section 1044(d) of such Code is amended  
 13       by striking the last sentence.

14           (10)(A) Section 1211(b)(2) of such Code is  
 15       amended to read as follows:

16                   “(2) the sum of—

17                           “(A) the excess of the net short-term cap-  
 18           ital loss over the net long-term capital gain, and

19                           “(B) one-half of the excess of the net long-  
 20           term capital loss over the net short-term capital  
 21           gain.”.

22           (B) So much of section 1212(b)(2) of such  
 23       Code as precedes subparagraph (B) thereof is  
 24       amended to read as follows:

25                   “(2) SPECIAL RULES.—

1 “(A) ADJUSTMENTS.—

2 “(i) For purposes of determining the  
 3 excess referred to in paragraph (1)(A),  
 4 there shall be treated as short-term capital  
 5 gain in the taxable year an amount equal  
 6 to the lesser of—

7 “(I) the amount allowed for the  
 8 taxable year under paragraph (1) or  
 9 (2) of section 1211(b), or

10 “(II) the adjusted taxable income  
 11 for such taxable year.

12 “(ii) For purposes of determining the  
 13 excess referred to in paragraph (1)(B),  
 14 there shall be treated as short-term capital  
 15 gain in the taxable year an amount equal  
 16 to the sum of—

17 “(I) the amount allowed for the  
 18 taxable year under paragraph (1) or  
 19 (2) of section 1211(b) or the adjusted  
 20 taxable income for such taxable year,  
 21 whichever is the least, plus

22 “(II) the excess of the amount  
 23 described in subclause (I) over the net  
 24 short-term capital loss (determined)



1 without regard to this subsection) for  
2 such year.”.

3 (C) Section 1212(b) of such Code is amended  
4 by adding at the end of the following:

5 “(3) TRANSITIONAL RULE.—In the case of any  
6 amount which, under this subsection and section  
7 1211(b) (as in effect for taxable year beginning be-  
8 fore January 1, 1998), is treated as a capital loss  
9 in the first taxable year beginning after December  
10 31, 1997, paragraph (2) and section 1211(b) (as so  
11 in effect) shall apply (and paragraph (2) and section  
12 1211(b) as in effect for taxable years beginning  
13 after December 31, 1997, shall not apply) to the ex-  
14 tent such amount exceeds the total of any capital  
15 gain net income (determined without regard to this  
16 subsection) for taxable years beginning after Decem-  
17 ber 31, 1997.”.

18 (11) Section 1402(i)(1) of such Code is amend-  
19 ed by inserting“, and the deduction provided by sec-  
20 tion 1202 shall not apply” before the period at the  
21 end thereof.

22 (12) Section 1445(e) of such Code is amend-  
23 ed—

24 (A) in paragraph (1), by striking “35 per-  
25 cent (or, to the extent provided in regulations,

1           28 percent)” and inserting “22 percent (or, to  
 2           the extent provided in regulation, 15.6 per-  
 3           cent)”, and

4           (B) in paragraph (2), by striking “35 per-  
 5           cent” and inserting “22 percent”.

6           (13)(A) The second sentence of section  
 7           7518(g)(6)(A) of such Code is amended—

8           (i) by striking “during a taxable year to  
 9           which section 1(h) or 1201(a) applies”, and

10          (ii) by striking “28 percent (34 percent”  
 11          and inserting “15.6 percent (22 percent”.

12          (B) The second sentence of section  
 13          607(h)(6)(A) of the Merchant Marine Act, 1936 is  
 14          amended—

15          (i) by striking “during a taxable year to  
 16          which section 1(h) or 1201(a) of such Code ap-  
 17          plies”, and

18          (ii) by striking “28 percent (34 percent”  
 19          and inserting “15.6 percent (22 percent”.

20          (14) The item relating to section 1202 in the  
 21          table of sections for part I of subchapter P of chap-  
 22          ter 1 of such Code is amended to read as follows:

“Sec. 1202, Capital gains deduction.”.

23          (d) EFFECTIVE DATES.—

24          (1) IN GENERAL.—Except as otherwise pro-  
 25          vided in this subsection, the amendments, made by

1       this section apply to taxable years ending after De-  
 2       cember 31 of the year which includes the date of en-  
 3       actment of this Act.

4           (2) REPEAL OF SECTION 1(h).—The amend-  
 5       ment made by subsection (c)(1) applies to taxable  
 6       years beginning on or after January 1 of the year  
 7       following the date of enactment of this Act.

8           (3) CONTRIBUTIONS.—The amendment made  
 9       by subsection (c)(2) applies to contributions on or  
 10      after January 1 of the year following the date of en-  
 11      actment of this Act.

12          (4) USE OF LONG-TERM LOSSES.—The amend-  
 13      ments made by subsection (c)(10) apply to taxable  
 14      years beginning on or after January 1 of the second  
 15      year following the date of enactment of this Act.

16          (5) WITHHOLDING.—The amendments made by  
 17      subsection (c)(12) apply only to amounts paid on or  
 18      after January 1 of the year following the date of en-  
 19      actment of this Act.

20   **SEC. 3. REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX**  
 21                   **FOR CORPORATIONS.**

22          (a) IN GENERAL.—Section 1201(a)(2) of the Internal  
 23      Revenue Code of 1986 (relating to alternative tax for cor-  
 24      porations) is amended by striking “35 percent” and in-  
 25      serting “22 percent”.

1 (b) TRANSITIONAL RULE.—Section 1201(b) of the  
 2 Internal Revenue Code of 1986 is amended to read as fol-  
 3 lows:

4 “(b) TRANSITIONAL RULE.—

5 “(1) IN GENERAL.—In applying this section,  
 6 net capital gain for any taxable year shall not exceed  
 7 the net capital gain determined by taking into ac-  
 8 count only gains and losses properly taken into ac-  
 9 count for the portion of the taxable year on or after  
 10 January 1 of the year following the date of enact-  
 11 ment of this subsection.

12 “(2) SPECIAL RULE FOR PASS-THRU ENTI-  
 13 TIES.—Section 1202(d)(2) shall apply for purposes  
 14 of paragraph (1).”.

15 (c) CONFORMING AMENDMENT.—Section  
 16 852(b)(3)(D)(iii) of the Internal Revenue Code of 1986  
 17 is amended by striking “65 percent” and inserting “78  
 18 percent”.

19 (d) EFFECTIVE DATE.—The amendments made by  
 20 this section apply to taxable years ending after December  
 21 31 of the year which includes the date of enactment of  
 22 this Act.

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